IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7665 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATISHKUMAR C PATEL

Versus

STATE OF GUJARAT

Appearance:

MR VC DESAI for Petitioner

MS MANISHA LAVKUMAR for Respondent No. 1, 2 & 3

None present for respondent No.4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/07/2000

ORAL JUDGEMENT

#. Challenge has been made by petitioner to the order of the Collector of Stamps, Ahmedabad, dated 18.1.99 under which the petitioner was directed to pay deficit stamp duty of Rs.5,000/= and three times penalty, Rs.15,000/=, in all Rs.20,000/=. This order has been confirmed by the

Chief Controlling Revenue Authority, Gujarat State, Ahmedabad, under its orer dated 5.4.90. This order has also been challenged by petitioner in this petition.

#. The petitioner, on receipt of show cause notice from respondent issued u/s.39(1)(b) of the Bombay Stamp Act, 1958, has given in writing on 28th December 1987, that as per the advice and guidance of the advocate Shri S.P. Shah, Legal Advisor of the State Bank of India, Mehsana, the stamp duty has been paid on the document. The document in question is the deed of mortgage and hypothecation executed on 16th July 1981 by the petitioner and respondent No.4 in favour of State Bank of India, Mehsana. It is further stated that the petitioner has no malafide intention to evade stamp duty. They agreed to pay Rs.5,000/= the deficit of the stamp duty and a token fine of Rs.5/=. Both the authorities have not accepted this explanation.

#. Heard the learned counsel for the parties.

#. It is really shocking that the persons who are bonafidely coming before the authorities are being dealt with as if they are the persons to be heavily penalized. The document is the deed of mortgage and hypothecation executed by petitioner and respondent No.4 in favour of the Bank and as per the advise given by the advocate, the stamp duty has been paid thereon. This document was registered on 16.1.81 and this notice has been given on 7th December, 1987. For six years and eleven months, no action has been taken. That also goes to show that the petitioner and respondent No.4 were correct in their approach that whatever advice given by their advocate is not incorrect. It is not the case where the authorities ascertained from the advocate and who in his turn, said that this advice was not given. The petitioner and respondent No.4 have acted in accordance with the advice of the advocate and it should not have been taken to be a case of malafide evasion of payment of stamp duty. It is not the finding of the Collector of Stamps, Ahmedabad area that malafide and with ulterior motive, this evasion has been made by petitioner. What the authority said is that it is not believable that the persons who carry on business by getting loan are ignorant about law and that the submission that he had no malafide intention to use less stamp cannot be accepted. This presumption which has been drawn does not seem to be correct, more so when it is a case where the dealing was with the bank who acts as per the advise of the advocate and that is what precisely has been done in the present case. The Collector of Stamps, Ahmedabad Area has not given any

reason not to accept that there was no malafide intention Same error has been committed by the appellate authority. The parties are to act in accordance with the advise of the advocate in legal matters. It is not the case where advise of the advocate was not taken by petitioner. The petitioner has acted bonafidely and there was no intention or any oblique motive to evade the stamp duty to be paid to the respondent. It is not the case where this heavy penalty has to be imposed by respondents. Substance of the matter has to be considered and in the facts of the case where on the first date of receipt of notice, the petitioner has given out that he is ready and willing to pay Rs.5,000/= towards deficit of stamp duty on the document, token fine at the most could have been imposed for this technical fault though in the facts of this case where the respondents have not initiated action for more than six years, even it does not call for.

#. Ms.Manisha Lavkumar, learned counsel for respondents, during the course of arguments, on the basis of what it is contained in he brief, the comments from the department concerned, contended that Rs.5,000/= have not been paid by petitioner. The learned counsel for the petitioner has shown original receipt of payment of Rs.5,000/=. This amount has been paid in the year 1992. Looking to the facts of this case, i.e. date of the presentation of the special civil application before this court, the date on which the notice was issued and the returnable date of notice and the date of deposit of Rs.5,000/= by petitioner, it is clear that these comments have been made by officer of the State after the amount has been deposited. Reply to the special civil application has also not been filed by respondents and only on the basis of what it is read out from the comments received by the Government advocate, it is difficult to accept what the learned counsel for respondents has complained of. As a result of aforesaid discussion, this special civil application succeeds and the same is allowed and the orders of both the authorities are quashed and set aside. Rule is made absolute. The respondent-State of Gujarat is directed to pay Rs.1,000/= as costs of this petition to the petitioner.

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(sunil)